

OCT 10 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

ROBERT J. TUGGLE,

Plaintiff - Appellant,

v.

COLUMBIA SPORTSWEAR INC.,

Defendant - Appellee.

No. 02-35711

D.C. No. CV-01-01597-RSL

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Robert S. Lasnik, District Judge, Presiding

Submitted October 8, 2003**
Seattle, Washington

Before: D.W. NELSON, KOZINSKI, and McKEOWN, Circuit Judges.

Robert Tuggle appeals the grant of summary judgment below. Tuggle failed to exercise his stock options in Columbia before they expired on November 28,

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

2000. Tuggle's failure to exercise the options was not excused by the actions of Columbia's agent, Kate Astle. Astle's attempts to contact Tuggle on the day his options expired did not prevent him from purchasing the options. Tuggle does not dispute that absent Astle's phone call, he would have allowed the options to expire due to his own inattention. Therefore, Astle's call did not contribute to Tuggle's failure to perform and his options expired under the terms of the contract.

Summary judgment was properly granted since Tuggle did not raise any specific facts showing that there is a genuine issue for trial.

The ruling of the district court is

AFFIRMED.